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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 001530

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DEPARTMENT FOR S/WCI - PROSPER/MILLER, EUR - BOGUE, EUR/SCE
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E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE OF ICTY

TAGS: [PREL](#) [PHUM](#) [BK](#) [HR](#) [SR](#) [NL](#) [ICTY](#)

SUBJECT: ICTY: DEL PONTE GREETS SLJIVANCANIN ARREST WITH
NEW QUESTIONS ABOUT SAM COOPERATION WITH TRIBUNAL

REF: A. (A) BELGRADE 1393
B. (B) THE HAGUE 1510

¶1. (U) Classified by Clifton M. Johnson, Legal Counselor.
Reasons 1.5(d) and 1.6.

¶2. (C) Summary. International Criminal Tribunal for the former Yugoslavia (ICTY) Chief Prosecutor Carla Del Ponte reacted to the arrest today of outstanding "Vukovar Three" fugitive Veselin Sljivancanin with tepid praise and further questions about Serbia and Montenegro's (SAM's) commitment to cooperate with the ICTY. While welcoming the arrest and noting that the presence of all three Vukovar accused in custody would facilitate their prosecution, Del Ponte's political adviser emphasized how the circumstances of the arrest demonstrated the SAM's lack of full cooperation in bringing war criminals into custody. End summary.

¶3. (C) Del Ponte's political adviser, Jean-Daniel Ruch, called embassy legal counselor at Del Ponte's request to convey her views about the arrest today (see ref A) of "Vukovar Three" fugitive Sljivancanin. Ruch acknowledged that the arrest was "good news," noting that the accused was a "bad guy" who deserved to be brought into custody and that his arrest and transfer would permit the three Vukovar suspects to be tried together in a single trial. By trying these accused together the prosecution would be able to free up a trial team and would be able to conclude its work more efficiently.

¶4. (C) Ruch then detailed at length three reasons why the USG and the international community should not view this arrest as a significant demonstration of SAM's commitment to cooperation with the Tribunal. First, he noted that Sljivancanin was arrested while living openly in his own house. Noting that the SAM had been told this for a long time by the OTP and would have known it in any event from the most rudimentary investigation into the matter, he asked rhetorically why SAM had denied for so long that it did not know Sljivancanin's whereabouts. Second, he described the arrest as being the result of "pure pragmatism" rather than any fundamental shift in SAM's approach to the ICTY. He observed that the looming certification deadline in the U.S. and the upcoming EU Thessaloniki meeting provided the kind of pressure that triggered the arrest. Otherwise, he noted, the arrest could have happened weeks or months ago. Ruch continued bitterly, "we could get all of the outstanding Serb fugitives into custody as long as the U.S. certification law remains in place for another 17 years."

¶5. (C) Finally, Ruch questioned the manner in which the arrest was conducted. "Why," he asked, did SAM "make such a spectacle of it?" Answering his own question, he stated that it was "100 percent politics" and that SAM authorities "staged" the arrest by involving hundreds of police and then waiting ten hours to enter the apartment so as to "provoke" Sljivancanin supporters into mounting a visible and dramatic resistance. In this manner, he opined, SAM hoped to show the international community how difficult the arrest was and receive maximum credit for it. When Embassy Legal Counselor countered that another interpretation of these events was that it demonstrated a fundamental change (albeit one motivated by pragmatic concerns) in SAM policies towards the Tribunal, Ruch replied that time would prove which view was correct but that neither he nor Del Ponte expected to see any significant additional arrests until this time in the certification cycle next year.

¶6. (C) The OTP's public comments on the arrest, while less grudging than those conveyed to us in private, also focused on what more the SAM should do rather than welcome what it had done. OTP Spokesperson Hartmann observed that "It was certainly about time to have him arrested" and said "we expect the police to continue searches and find and arrest the others, too." Pointedly, she added that "additional arrests were possible at least on the basis of information that we have made available."

¶7. (C) Comment. Over the past ten days, Embassy legal officers have seen an intense OTP campaign to counter the growing perception of improved SAM cooperation with the Tribunal (see ref B). This campaign, while reflecting the

genuine concerns of OTP investigators and prosecutors, has been driven by the Chief Prosecutor. Ruch emphasized today that his comments on the arrest "absolutely" reflected those of Del Ponte and was candid in saying that they were motivated by an OTP concern that SAM would use carefully calibrated gestures of cooperation to manipulate a certification decision in its favor. While the OTP's spin is overcompensating in the opposite direction, Ruch's basic point, that SAM's conduct after the certification decision will show whether we are in fact witnessing a fundamental change in its attitude towards the Tribunal, rings true. What the OTP leadership does not yet seem to grasp, however, is the degree to which its own grudging reaction to positive SAM steps could help fulfill its own prophesy. End comment.

SOBEL